

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA - NEW ALBANY**

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IN THE MATTER OF:	. Case #10-93904-BHL-11
	.
EASTERN LIVESTOCK CO., LLC	. New Albany, Indiana
	. <b>October 25, 2011</b>
Debtor	. 3:25:48 p.m.

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**TRANSCRIPT OF TELEPHONIC HEARINGS RE:  
CONTINUED STATUS CONFERENCE ON:**

**(#501) TRUSTEE JAMES KNAUER'S MOTION FOR AUTHORITY (TRUSTEE'S  
PURCHASE MONEY CLAIMS REPORT, MOTION TO TRANSFER FUNDS, AND  
NOTICE OF RELEASE OF PROCEEDS FROM ACCOUNT, WITH OBJECTIONS  
AND AMENDED OBJECTIONS AND RESPONSES THERETO FILED;**

**CONTINUED TELEPHONIC HEARING ON:**

**(#317) FINAL HEARING RE MOTION TO ABANDON, CORRECTED MOTION FOR  
RELIEF FRO STAY, FILED BY CREDITOR PEOPLES BANK & TRUST COMPANY  
OF PICKETT COUNTY;**

**(#732) MOTION BY TRUSTEE JAMES A. KNAUER FOR ENTRY OF AN ORDER  
GRANTING TRUSTEE AUTHORITY TO (1) COLLECT RECEIVABLE,  
(2) HOLD RECEIVABLE PROCEEDS IN SEGREGATED ACCOUNT PENDING  
DETERMINATION OF RIGHTS THEREIN, (3) TRANSFER RECEIVABLE  
PROCEEDS TO OPERATING ACCOUNT AFTER SUCH DETERMINATION,  
(4) CONTINUING BRIEFING SCHEDULE ON THE FOREGOING;**

**(#738) JOINT MOTION AND FIRST STIPULATION REGARDING DISCOVERY  
PROTOCOLS, FILED BY PETITIONING CREDITOR SUPERIOR LIVESTOCK  
AUCTION**

**BEFORE THE HONORABLE BASIL H. LORCH, III, J.U.S.B.C.**

**APPEARANCES: (See Next Page)**

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## APPEARANCES - Continued

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1 (At 3:51:20 p.m.)

2 NOTE: Telephone transmission reduces clarity and results in  
3 "(unclear)" notations.

4 \* \* \* \* \*

5 THE COURT: All right, we're on the record in  
6 Eastern Livestock. Would the attorneys present in the  
7 courtroom state the appearances, please?

8 MS. HALL: Terry Hall for James Knauer, the  
9 Trustee.

10 MR. TONER: Kevin Toner for James Knauer.

11 MS. MAPPE: Harmony Mappes for the Trustee.

12 MR. LaTOUR: Randall LaTour for Fifth Third Bank.

13 MR. DONNELLON: Dan Donnellon for First Bank &  
14 Trust.

15 MR. AMES: John Ames, Chip Bowles, and Christie  
16 Moore for Superior and Joplin.

17 MR. OYLER: Michael Oyler for Your Community Bank.

18 MS. LALLY: Elizabeth Lally for Trustee Walro.

19 MR. ROBINSON: Mark Robinson for Cactus Growers,  
20 Friona, and others.

21 MS. BRYANT: Lisa Bryant for Peoples Bank of  
22 Pickett County.

23 THE COURT: And appearing by phone. Are we --

24 MS. CARUSO: Debbie Caruso, Your Honor --

25 THE COURT: All right, let -- let me interrupt you.

1 Kristen says she already has your -- your names, and so I  
2 won't go through that again. I will ask though that if you  
3 speak, to identify yourself for the record. And I'll ask  
4 that the attorneys in the courtroom do the same.

5 All right, I'm going to work from a second amended  
6 proposed agenda which was submitted by the Trustee counsel.  
7 The first matter I see is the purchase money claims report.  
8 Who wants to address that?

9 MS. HALL: Your Honor, this is Terry Hall for the  
10 people on the phone, and the entire continued matters, the  
11 purchase money claims report, these are simply the items that  
12 were reserved for resolution. Under the purchase money  
13 claims report we have either supplied a scheduling order,  
14 uploaded a scheduling order, or it's been entered. At this  
15 point in time nothing under Item 1 under "Continued Matters"  
16 is up for specific action at this time. It's just for a  
17 status conference.

18 THE COURT: All right.

19 MS. HALL: So as far as I know all of the -- we're  
20 just in process related to going through discovery and  
21 exchanging documents and coming up with what we're doing in  
22 order to resolve those contested matters coming out of the  
23 purchase money claims report. So I'm not sure that there's  
24 anything to be --

25 THE COURT: All right, does anyone --



1 MS. HALL: -- done at this time.

2 THE COURT: -- want to add anything, other than the  
3 fact that all these matters will be covered by sched -- either  
4 have been or will be covered by scheduling orders?

5 (No response)

6 THE COURT: All right, hearing nothing, I'll move  
7 on to Item #2 under "Continued Matters," and that's Peoples  
8 Bank & Trust, a motion for relief of Peoples Bank & Trust of  
9 Pickett County.

10 MS. BRYANT: Lisa Bryant on behalf of Peoples Bank  
11 & Trust of Pickett County. I think we've agreed to have this  
12 heard -- scheduled for an evidentiary hearing on November  
13 15th, Your Honor.

14 THE COURT: All right --

15 MS. BRYANT: So happily that may conclude my  
16 business this afternoon -- not that this isn't a great place  
17 to be, but if I may be excused.

18 THE COURT: I have -- I show Eastern on 1:30 on  
19 that date, and you all have agreed to do, what? An  
20 evidentiary hearing?

21 MS. BRYANT: Yes, Your Honor.

22 THE COURT: How long do you anticipate -- is that  
23 an omnibus day? So are you going to do it at the end of the  
24 omnibus date, then?

25 MS. BRYANT: I guess so, Your Honor.

1 THE COURT: So that probably won't be 1:30. That  
2 -- luckily, that's not a Chapter 13 day.

3 MS. BRYANT: That's why we didn't want to do it  
4 today.

5 THE COURT: All right. Okay. So we'll have that  
6 at the conclusion of the omnibus hearing on the 15th. Yes.

7 MR. LaTOUR: Your Honor, could I request that the  
8 parties, or one of the parties, upload metes and bounds  
9 descriptions of the real property in question? There's four  
10 different parcels, and for three or four months now we've not  
11 known which property we're talking about, so if they could  
12 just give us --

13 THE COURT: Don't upload it on this docket, but  
14 send it to Mr. LaTour within seven days.

15 ATTORNEY: I will, Your Honor.

16 THE COURT: The metes and bounds description.

17 MS. BRYANT: A fairly short description.

18 MR. LaTOUR: Thank you.

19 MS. BRYANT: Thank you, Your Honor.

20 THE COURT: Right. Thank you.

21 New matters: Roman Numeral III, #3. Motion to  
22 Collect Receivable.

23 MS. HALL: Your Honor, this is a motion filed by  
24 the Trustee to essentially put a matter in controversy so that  
25 the Trustee can resolve an issue between it and one of the

1 creditors, certain creditors in the case.

2           It goes back to part of the money -- coming out of  
3 the purchase money claims report, and we've agreed to place  
4 this before the Court so there's actual dispute and  
5 controversy before the Court so we can address the asserted  
6 issues. No objection's been filed. We just ask that the  
7 motion be granted that allows us to go ahead and collect the  
8 receivable, hold it in escrow, and then put the dispute before  
9 the Court so that we can resolve who owns the receivable.

10           THE COURT: All right. Does anybody want to be  
11 hear on that? I'll show that that motion was granted.  
12 Upload an order.

13           #4, joint motion and first stipulation regarding  
14 discovery protocols.

15           MR. TONER: Kevin Toner, Your Honor. This is a  
16 product of negotiation of about a half a dozen lawyers to try  
17 and come up with procedures across the matters in this case  
18 for the handling of discovery. It includes a way to give  
19 notice to all parties that discovery has occurred and  
20 documents are available; and it envisions setting up an  
21 electronic site where materials could be given to the Trustee  
22 and then uploaded for people to get, subject to a  
23 confidentiality order.

24           That website procedure is going to cost about \$1,600  
25 a year to operate, and \$2,500 for training; and we'll be

1 asking the make those administrative fees happen.

2 Because not every lawyer in the case was involved in  
3 discussing the protocol, we thought it was appropriate to put  
4 it out there to see if there were any comments today before it  
5 goes forward.

6 MS. MOORE: I think we noted, it's in the first--  
7 on the first page that there were several lawyers that did  
8 have an opportunity to vet this, and so it has been looked  
9 over by quite a few parties.

10 THE COURT: All right. Does anybody have any  
11 questions or comments about the proposed discovery protocol?  
12 I'll grant the joint motion, if you upload it or --

13 MS. MOORE: I think we did submit an order, but  
14 we'll submit another order.

15 THE COURT: Okay, well, no, you don't need to  
16 submit another one if you have. I just never know if you have  
17 or haven't. I sometimes do.

18 MR. BOWLES: We will verify it's been uploaded.

19 MS. MOORE: Yes, I sometimes submit them when I'm  
20 not supposed to.

21 THE COURT: I understand. All right. Roman  
22 numeral IV, adversary proceedings. Issue -- Matter #5,  
23 Trustee vs. Willie Downs.

24 MR. TONER: Yes, Your Honor. Kevin Toner again.  
25 In that case the Blue Grass entities and World Livestock have

1 until November 4 to appear and answer. As soon as that  
2 occurs, we're ready to have an attorneys' conference, and then  
3 report to you in a pre-trial conference at the next omnibus.

4 THE COURT: All right. Anybody else have a comment  
5 about that matter? I'll show that's been continued for a  
6 pre-trial conference on November 15th at 1:30.

7 Superior.

8 MR. BOWLES: Yes, Your Honor. Chip Bowles. The  
9 matter that we had was just simply a status conference on our  
10 motion for partial judgment on the pleadings.

11 If you remember, at the September hearing you had  
12 entered an order where the pleadings will be closed at the end  
13 of October, and by November 28th all briefing on the motion  
14 for partial summary judgment will be completed, and nothing  
15 has changed on that.

16 There was a second matter that's appeared on the  
17 Trustee's time line, but that I show being resolved back a  
18 couple of hearings before about the defendants' joint motion  
19 to consolidate or dismiss.

20 THE COURT: Well, I think it has reared its head  
21 again, to put it politely. It's certainly mentioned  
22 prominently in a lot of pleadings, but, you know, we haven't  
23 even -- I mean, I've -- we've looked at some of the pleadings  
24 that have been filed, but not all of them; and obviously, as  
25 you say, they haven't even closed yet. They close in a few

1 days.

2 MR. BOWLES: Yes, Your Honor.

3 THE COURT: I mean, I am -- I am aware of the, you  
4 know, the position taken by several parties that -- that I  
5 shouldn't have allowed Superior to have their own lawsuit,  
6 and, you know, that that issue is not as distinct as Superior  
7 argues that it is.

8 I -- I'm still inclined to think that I don't see  
9 any harm, since we've got this issue almost fully briefed now,  
10 to at least determine this initial issue in Superior; and for  
11 those who say, "Well, that's going to have an impact on other  
12 parties," that question of law, my initial thinking is, well,  
13 -- well, several things: First of all, it's certainly going  
14 to be fully briefed and opposed in this case, including by the  
15 Trustee; and second of all, I don't now that once I reach -- I  
16 mean, I think those who think once I reach a decision as to  
17 what the law is on this issue -- and I'm not anywhere near  
18 that at this point -- that I might not change that position  
19 are probably right: I probably won't. But if there are  
20 distinct facts in other disputes that are different from  
21 Superior's facts, of course that will be taken into  
22 consideration.

23 So I'm not going to rule on the motion to  
24 consolidate or to dismiss today. I can't say that once I've  
25 gone through this and gone through everything and it's been

1 fully briefed and replied to, what the final outcome will be  
2 in terms of how Superior interrelates with Friona. But I'll  
3 let you know. Right now I'm going to stay on the path that I  
4 started down a couple hearings ago, or several hearings ago.

5 All right. Friona.

6 MR. BOWLES: Your Honor, the one thing I think is  
7 necessary on that is something very similar to what you had,  
8 and that is Superior's motion for partial stay of the portion  
9 of the Friona loss of the Texas interpleader lawsuit, and  
10 relates only to specific funds claimed by Superior. That's  
11 been fully briefed, but in some respects --

12 THE COURT: I haven't -- I haven't read those yet.

13 MR. BOWLES: Okay. Then would you like me to go  
14 on, or are you --

15 FEMALE ATTORNEY: We shouldn't do this after 13s.

16 THE COURT: Well, it's not only 13s, but I also  
17 taught today and yesterday, and I'm just not -- I haven't had  
18 as much time before this hearing as in normally do before  
19 these hearings.

20 MR. TONER: There was a new brief filed yesterday,  
21 Your Honor, that you may not have seen.

22 THE COURT: I have not seen anything filed  
23 yesterday, I'll guarantee you that. But I know you oppose  
24 that. I did see the -- I mean, I've glanced at what's been  
25 filed.

1 MR. TONER: We do, and one point I think that might  
2 not come out from the papers is the overlap between Superior's  
3 position in the Friona case and some other parties in that  
4 case, like Joplin and Blue Grass. They're arguing the same  
5 legal issues that Your Honor is starting to think about in the  
6 motion for judgment on the pleadings in the Superior case.

7 THE COURT: Right. I understand.

8 MR. TONER: There really is overlap, but there  
9 really should not be the stay they ask. And the briefs  
10 address why.

11 THE COURT: All right. Mr. Bowles.

12 MR. BOWLES: Your Honor, without going into great  
13 detail, there really isn't much overlap in these cases. In  
14 fact, the only overlap goes to about a million five in the  
15 Kansas -- in the Kansas interpleader there's an interpleader  
16 for a million five total amounts at issue. Superior has filed  
17 an answer in that, seeking 742,000 of that.

18 In the Texas interpleader, six million eight  
19 approximately is the amount in controversy. We've filed  
20 answers that have claimed two million 653 of that.

21 Your Honor, the interpleaders are basically, "Here  
22 is a pot of money." People have claims to the pot of money.  
23 No more, no less. The only issues that you have in the  
24 overlap is Superior claims -- since it's already paid the  
25 underlying producers under these particular contracts, we



1 claim those specific pots of money.

2 Now the issue they say is, "Oh, there are other  
3 parties who have brought forward contract, forward contract  
4 merchant swap agreements. and swap -- and swap participants."  
5 That, Your Honor, you've already hit the nail on the head.

6 Your Honor, these are basically things in the  
7 Superior AP. They relate to Superior's dealings with Eastern.

8 A determination whether it's a forward contract, it depends  
9 on the particular contract, (unclear) petition of whether the  
10 (unclear) forward contract merchant, depends upon Superior's  
11 status, the period of swaps and swap agreements for the same  
12 issues.

13 So, Your Honor, while there are certain legal  
14 principles of our applying the complex law there, they don't  
15 have any overlap. It's not like you're trying to say, "Gee,  
16 if every preference two days past the due date is a  
17 preference," there will be no such issues because you have to  
18 look at each subcontract's and each party's position.

19 So really, Your Honor, except for the two monetary  
20 overlaps we have, there's almost no overlap.

21 The other objections they raise, Your Honor, they  
22 say there are overlaps. They also argued -- and there aren't  
23 that many overlaps -- they say, they argued originally this  
24 interferes with discovery. Back in September, under the  
25 discovery protocols, that (unclear) doesn't interfere with

1 discovery in any way, shape, form, or fashion, given the way  
2 we've worked to craft to find the discovery process that works  
3 in every case, so there is no delay there.

4           They say that -- there seems to be an argument that  
5 says that if Superior gets a resolution to the issues it  
6 raised in its AP, that will not be binding on them, and they  
7 will get another bite at the apple. Your Honor it's been made  
8 clear, and I know you haven't had a chance to read it, we are  
9 bound by what comes out in the Superior AP, just like any  
10 other party. The doctrine of *res judicata* and collateral  
11 estoppel has not been suspended, nor would a stay of the  
12 underlying lawsuit have anything to do with it.

13           They also argue, Your Honor, that Fifth Third's  
14 presence somehow prevents a limited stay; that, Your Honor,  
15 doesn't hold water for a number of reasons. If nothing else,  
16 Fifth Third is also now in the Superior AP, and are the  
17 (unclear) plaintiffs, as is the debtor.

18           Basically, Your Honor, if the Superior AP with all  
19 its various components is put into the rest of the APs, you're  
20 going to both see elephants that will perhaps trample smaller  
21 litigants; plus, you're going to have people who have nothing  
22 to do with any of the complex issues related here having to  
23 either sit by and wait, or have to participate, either  
24 directly or indirectly in a fight that they have nothing to do  
25 with it, because they're saying in the interpleader actions,

1 "We want this small pot of money, Your Honor. Not that we  
2 care about whether somebody is a forward contract merchant or  
3 anything."

4 So, Your Honor, basically I think this is just  
5 something so that we don't have to litigate -- both we and the  
6 Trustee don't have to litigate on five different fronts.

7 THE COURT: Well, what exactly do you -- what part  
8 of it, exactly, do you want stayed?

9 MR. BOWLES: The only thing we want stayed, Your  
10 Honor, is simply the numbers that we talked about. Superior  
11 has claims of ownership to certain chunks of money. We just  
12 simply say those should be resolved in the Superior AP. It's  
13 not they're being stayed. They're going to be resolved in  
14 the Superior AP, but we believe that's the appropriate thing  
15 rather than us having to do duplicate pleadings at double cost  
16 on all issues.

17 THE COURT: Well, see, there is the problem of  
18 letting you have your own lawsuit. I mean, that -- that's  
19 where we're got -- well, what impact -- what impact does it  
20 have on other parties if the Superior portion is done in  
21 Superior and not in Friona?

22 MR. TONER: One important impact I think is the  
23 foot of the *res judicata* argument. There are issues filing  
24 forward in the Friona case that I predict Superior wants to be  
25 heard on; and as I read the motion to stay, they're just

1 saying, "We don't want to be bound by any adverse outcomes in  
2 the Friona case. We'll go litigate our case privately with  
3 just the Trustee. We don't want anything to happen over here  
4 on other issues that will bind us."

5 THE COURT: Well, what if I -- what if I stay the  
6 Friona -- anything against Superior in Friona, but they go  
7 ahead and litigate with some other party who has what *they* say  
8 is this kind of contract, and get some sort of resolution of  
9 that issue?

10 I mean, you -- you -- are -- you don't want that  
11 happen? Or you want -- you *do* want that to happen?

12 MR. BOWLES: The basic thing, Your Honor, is what  
13 you -- is what they've hit upon, and that is the main issue in  
14 this case.

15 The Trustee likes to apparently, or for whatever  
16 reason, litigate on numerous fronts hoping if they win one  
17 place they can win them all. In other words, Your Honor,  
18 what -- this isn't really an argument about judicial economy.  
19 It's an attempt to find some form somewhere when I win an  
20 issue and therefore can try to bind everybody else. And we  
21 don't want to have multiple litigations -- most of us -- it  
22 has no overlap.

23 But the one problem we did find a long time ago is  
24 not so much even *res judicata* and collateral estoppel but more  
25 of law of the case, and perhaps some forms of *res judicata* as

1 being applied against third parties.

2 No, Your Honor. On the things that we have here, of  
3 which we are going forward, by (unclear) --

4 THE COURT: Do -- but do you want me to stop them  
5 from litigating against other parties in -- in Friona?

6 MR. BOWLES: Your Honor, what we are saying is  
7 this: And we can do -- use this as an example. Let's say  
8 they litigate in the other party and say they want to raise an  
9 issue which would be (unclear) their pleadings they filed,  
10 something on constructive trust. Yes, we will be heard on the  
11 constructive trust issue if it's being decided as a specific  
12 issue that (unclear) everybody in the case.

13 If they're litigating on something like -- which is  
14 more appropriate in these type of actions of who has a claim  
15 to this money? Is it Fred, the gentleman farmer, who gave  
16 them 500 cows and says, "I have a security interest or  
17 something else"? If it has no general issue that overrides  
18 every issue, we have no problem with that. So (unclear) Your  
19 Honor says we can probably deal with that.

20 If they're trying to say, "I want to pick one small  
21 person and litigate an overriding issue just with that small  
22 person," then, yes, we have a problem with that.

23 MR. LeBAS: Your Honor, David LeBas for J&F  
24 Oklahoma. May I be heard on this issue for a moment?

25 THE COURT: You may. Yes.

1 MR. LeBAS: Thank you. And I speak in opposition  
2 to the motion to stay. It's (unclear) the motion to  
3 consolidate, which I understand you're not considering today;  
4 but the motion to stay is going to have much of the same  
5 effect, and if a piece of it he's carved out as is apparently  
6 suggested here, I think it could certainly have a much larger  
7 overall effect in what's been mentioned so far.

8 And, for example, one of the issues that's going to  
9 have to be decided by the Court -- I believe identified in our  
10 pleadings -- is what we call the critical issue, and the  
11 critical issue being, what is the effect of someone who  
12 delivers cattle to another party without requiring payment  
13 upon the delivery? That underlies almost every dispute that  
14 exists in this case, and whether it gets decided as to  
15 delivery by delivery or in large masses in deliveries, as in  
16 the Superior case, the Court needs to hear briefing and fact  
17 development on that issue from everybody.

18 Superior's claim is an effort to assert what claims  
19 Eastern Livestock has under the same contract background that  
20 all the other parties have. And so it's really not a true  
21 statement, I don't think, to carve out the Superior piece from  
22 the rest, because they're simply saying by virtue of this  
23 assignment or this rescindment document that's under  
24 discussion they now have rights that Eastern has. And if  
25 those are the rights that we're talking about -- that is, what

1 happens when someone delivers and doesn't get paid, that's  
2 exactly the same issue that every other supplier that's not  
3 paid is going to assert in this case.

4 We don't want to have to try that twice. We also  
5 don't think it's fair to have it tried one time in the absence  
6 of the ability of the parties who were also unpaid sellers,  
7 without having been able to participate in the fact  
8 development as well as the legal argument.

9 THE COURT: Well, then let me follow up with you on  
10 that. If -- if I would grant the motion to consolidate, we  
11 still have the briefs, even though it would be -- it would now  
12 have a different cause number -- we still have the briefs on  
13 file between Superior and the other parties asserting a claim  
14 to the specific funds, the Court's still going to have to  
15 determine that issue, right? And that doesn't mean that  
16 everybody who has claims to any funds are going to come  
17 forward and file briefs in that case. I mean, Mr. LaTour is  
18 going to -- is already a party in interest for the bank. The  
19 Trustee's already a party in interest, and I forget who else  
20 we names as parties in interest.

21 MR. TONER: The three Texas interpleader --

22 THE COURT: The Texas --

23 MR. TONER: -- feed lots, yes.

24 THE COURT: The three Texas -- I mean, you are  
25 already parties in interest, so -- even if --

1 MR. LaTOUR: Your Honor --

2 THE COURT: -- Well, let me ask this question more  
3 succinctly, and then someone give me an answer. Even if I  
4 consolidated them, could we not and would we not just go ahead  
5 and resolve this legal question first?

6 MR. LaTOUR: Your Honor, if I could weigh in, since  
7 we are apparently giving the argument on this issue, I think  
8 Rule 7042 gives you the answer on how to deal with this.  
9 What it tells you is that you have the power to consolidate  
10 the entire proceeding if you want to, but you also have the  
11 power to join for hearing or trial any or all matters at issue  
12 in the actions, which allows you to pick and choose.

13 Therefore, you don't need to stay anything to give  
14 one side or the other the perceived or the actual advantage in  
15 litigation. You don't have to consolidate everything so that  
16 somebody that has an argument about 179 steers are suddenly  
17 faced with briefing 546(e). But what you can do is when there  
18 are issues that are common to both cases, somebody can file a  
19 motion and say, "Your Honor, I would like you to hear this  
20 under 7042(a)(1), with the other adversary, and give notice to  
21 people so they can join, and cure it once and decide it once."  
22 Then you don't have mysterious questions of collateral  
23 estoppel to figure out; we don't have *res judicata*; we don't  
24 have somebody taking two bites at the apple.

25 Now right now Superior is telling you inconsistent



1 things. They're completely unrelated, but they're so related  
2 that they ought to be stayed. In the pleading that you  
3 haven't had the opportunity to read, they reveal for the very  
4 first time that it's not 500 contracts. It is estimated to be  
5 in the thousands, and that the amount in question is not the  
6 unstated number of the adversary proceeding, but it's instead  
7 19 million dollars. These are completely new facts that are  
8 raised; completely new sets of issues.

9           To then say, "Well, now let's stay all these other  
10 proceedings and carry that through," is to continue on in the  
11 effort to have a private litigation. All they're really  
12 asking you to stay is an adverse decision against them. They  
13 say, "Go forward with discovery with everybody," and  
14 presumably including them. "Go forward with every issue with  
15 everybody," and if they like the issue they'll chime in and  
16 litigate; but they're asking to stay anything that might be  
17 adverse to them, and the answer is "Why?" -- the question is  
18 "Why?" Why is it 19 million dollars suddenly shows up now.  
19 Why is it thousands of contracts instead of the defined 500  
20 contracts?

21           There's utterly no reason to give the extraordinary  
22 relief of staying one adversary proceeding that is actually  
23 starting to move forward and getting things accomplished  
24 because they have one that they will tell you is unrelated in  
25 any significant way, and yet they still want you to stay the

1 former one.

2           So you don't have to stay any of them. You don't  
3 have to consolidate any of them. If there are issues that  
4 overlap, Rule 7042 lets you pick and choose the particular  
5 issue to join those two adversary proceedings for hearing.

6           MR. TONER: I think 7042 --

7           MR. LaTOUR: And that's what you --

8           MR. TONER: -- is exactly right; and Mr. Bowles  
9 mentioned a second ago constructive trust. Well, the Trustee  
10 yesterday filed a summary judgment motion to deal with  
11 constructive trust and statutory trust issues in the Friona  
12 case. I suspect Superior wants to speak to those legal  
13 issues, but if their stay were granted they would not be able  
14 to.

15           I think -- because Mr. LaTour suggests the ability  
16 to pick and choose what is going to have impact across these  
17 cases is the right way to go --

18           THE COURT: And what --

19           MR. TONER: -- but a stay is not.

20           THE COURT: -- what's the Trustee's suggestion as  
21 to how that would unfold in this case?

22           MR. TONER: I'm afraid it means no stay, and we go  
23 forward with briefing where it makes sense. There are these  
24 overlaps, and so long as folks are generally aware of what's  
25 being filed they can chime in to protect their own clients'

1 interests.

2 THE COURT: I'm not sure that I understood your  
3 answer. Well, I understood the "no stay" part. But in what  
4 -- but tell me what you meant by the rest of that.

5 MR. TONER: Well, I guess what I meant was if there  
6 is a 546(e) brief, say, in the Superior case --

7 THE COURT: Right.

8 MR. TONER: -- I know Joplin who is interested in  
9 that is represented by the same counsel -- they'll be  
10 perfectly aware. I know that Blue Grass is interested in  
11 that, and their attorney was allowed to file an appearance to  
12 monitor what's going on the Superior case.

13 So I think you'll hear from those who are interested  
14 and want an opportunity to brief and be heard.

15 THE COURT: If I do what?

16 MR. TONER: If you don't grant a stay, and I'm  
17 afraid probably don't grant consolidation. The easiest way  
18 to make sure everyone gets notice would be to consolidate it  
19 back and have one proceeding.

20 THE COURT: But absent --

21 MR. TONER: To stay on path, as Your Honor  
22 suggested, I -- I think what we need to do is not stay.

23 THE COURT: Well, the one thing that I hate to do  
24 is -- and I hate to do this in either case -- as I indicated  
25 last time, I'm ready to start getting some things decided in

1 this case, and I know the lawyers are. So I hate to take any  
2 steps backwards.

3 I mean, we've got an issue here in Superior that is  
4 almost fully briefed -- well, not quite. There will be a  
5 reply brief. But almost all the initial answers, briefs have  
6 been filed. So -- well, I know, but up to -- they will be by  
7 Halloween, so we're almost there.

8 So -- and I tried to take the step last time, or the  
9 time before, to -- by allowing other parties to be brought  
10 into that, over the objection of Superior, to make sure that  
11 defici -- that the issue would be fully explored and briefed  
12 by parties in interest. Anybody -- so what would -- what else  
13 would the Court need to do to see that that issue can proceed  
14 to be determined?

15 MR. TONER: I think we've done it, but I don't want  
16 to speak for the movants on the motion to consolidate or  
17 dismiss.

18 THE COURT: But they're in now, right?

19 MR. TONER: They're in, and they can speak --  
20 they're on the phone, too.

21 THE COURT: Yeah, I mean, if you guys -- if you  
22 guys are already in the Superior, what's the prejudice to you?  
23 I mean, what's the need for consolidating under a different  
24 cause number now?

25 MR. LeBAS: This is Dave LeBas, and I'll just speak

1 first, and the others can chime in as needed.

2           The prejudice to -- at least as I see it -- will  
3 involve that joint -- or duplicate the effort that will be  
4 involved. If it should turn out that the Court decides to  
5 deny the effort by Superior to enforce its assignment or  
6 rescindment claims. At that point then Superior will be in  
7 much the same position as we give these other unpaid parties,  
8 in which case we'll have to go back and try to recreate what  
9 those transactions (unclear) as they unfold. We don't want  
10 to have to go back, for example, and re-depose Mr. Gibson, re-  
11 depose the truckers, and re-depose the principals, depending  
12 on what the Court's ruling may be.

13           THE COURT: I'm not sure why you would have to -- I  
14 don't understand that. I mean --

15           MR. LeBAS: Would you like an example?

16           THE COURT: Yeah, give me another -- give me an  
17 example that --

18           MR. LeBAS: Okay, as an example, as I understand  
19 the Superior claim today, it seeks to enforce claims that  
20 Eastern Livestock would have.

21           THE COURT: Right.

22           MR. LeBAS: And as a supplier through Eastern to,  
23 for example, the feed yard companies -- if the Court does not  
24 permit Superior to assert its own independent claim then those  
25 claims would have to go through Eastern in much the same way

1 that supplier claims today must be asserted through Eastern.

2 THE COURT: Okay.

3 MR. LeBAS: The same issues would have to be  
4 addressed on those transactions as would have to be addressed  
5 with the ones that currently exist in the interpleader case.

6 THE COURT: Okay. But if I bring them into the  
7 interpleader case now, consolidate them, they're still going  
8 to want to get a preliminary determination on this point of  
9 law, and I'm still going to have to determine that: Yes or  
10 No.

11 MR. LeBAS: Oh, I agree with that. Yes.

12 THE COURT: And even if -- and if I say "No," like  
13 you say, then they're still going to assert other claims,  
14 other legal bases, like you say, much like other parties do to  
15 some funds. So I don't see how that changes things, other  
16 than cause numbers.

17 MR. MASSOUH: Your Honor, this is John Massouh for  
18 Friona Industries. Just to touch on that, practically, I  
19 think if you consolidate the two matters, we can still stay on  
20 the same briefing schedule that was ordered by the Court at  
21 the last omnibus on the issue that you're talking about. I  
22 seems to me that your concern is to keep -- keep at issue  
23 (unclear) brief going forward, I still think we can do that  
24 notwithstanding consolidation of the case, and that issue  
25 could still be determined; and once determined, you know, the

1 -- all the parties in interest will have notice of it and will  
2 have a right to speak to it and things of that nature, and if  
3 the answer is "No," (unclear) Mr. LeBas (unclear) -- then --  
4 then there's -- there's numerous common issues that's between  
5 Superior and the other defendants.

6 Another thing, Your Honor, that he touched on with  
7 regard to the stay motion is Mr. Bowles mentioned that they  
8 want to avoid multiple litigation. (unclear) they're the ones  
9 who created the multiple litigation. There is already a  
10 pending adversary proceeding or lawsuit that Friona filed.  
11 And another thing is that I think it's practically virtually  
12 impossible to stay (unclear) added to Superior, as they would  
13 suggest, because all the claimants in the adversary proceeding  
14 or the (unclear) adversary, that counterclaims, cross-claims  
15 against all parties, including Superior; and Superior also has  
16 claims against all of the defendants, and so to say the matter  
17 just pertains to Superior is, in effect, (unclear) the entire  
18 interpleader action which (unclear).

19 THE COURT: Okay. I want to move on. I'll tell  
20 you that I'm going to -- I'm not going to rule from the bench  
21 because I've not read everything; and I want to make sure that  
22 I'm fully apprised.

23 My gut reaction is probably to deny both motions;  
24 but I have not -- it's not fair to the parties for me to do  
25 that without having fully read everything that they've written

1 and filed, and I'll do that.

2 I do think Mr. LaTour's suggestion is valuable in  
3 terms of how to proceed under the Rules, but I'll get you --  
4 I'll get you short written orders on both of those within a  
5 few days.

6 Let's move on. Is there anything else in Friona? I  
7 know Mr. Bowles went directly to the stay matter. Are there  
8 any other issues in Friona that we need to deal with?

9 MR. TONER: Not that I'm aware of, Your Honor.

10 THE COURT: All right. Innovative -- we've still  
11 -- we have the motion to stay there, and a response, which  
12 I'll deal with as indicated.

13 The Rush Creek Ranch --

14 MR. TONER: There's been a stipulation to  
15 consolidate arguments into that interpleader that came out of  
16 Wisconsin to make things more efficient. All the parties  
17 agree. I don't think there's anything to do there, Your  
18 Honor.

19 THE COURT: So that's Fredin Brothers?

20 MR. TONER: No. Rush Creek is what I was talking  
21 about.

22 THE COURT: Oh, yes. Rush Creek. Okay. So  
23 that'll be -- there's an agreement to consolidate?

24 MR. TONER: The purchase money dispute has the same  
25 legal issues as are pleaded in the Rush Creek case, and the



1 parties have agreed to bring those on in and deal with them in  
2 that one matter -- that one adversary proceeding.

3 THE COURT: And which adversary proceeding is that?

4 MR. TONER: The Rush Creek adversary proceeding.

5 THE COURT: Well, I know, but which one are you  
6 going to combine it with.

7 MS. HALL: Oh, 1(a), Your Honor -- the Florida  
8 objections.

9 MR. TONER: The Florida objections.

10 THE COURT: Oh. Yes.

11 MR. TONER: It's Florida and Wisconsin. Hard to  
12 think of them together, in my mind.

13 THE COURT: I understand. Did someone else want  
14 to be heard on that?

15 MR. NEWBERN: Your Honor, this is Scott Newbern.  
16 We're just consolidating, and the parties have agreed to it.  
17 I represent the Florida creditors.

18 THE COURT: Okay. Very good. All right, and then  
19 Fredin Brothers.

20 MR. TONER: There is a summary judgment motion,  
21 Your Honor. Our response is due November 21st.

22 THE COURT: All right.

23 MS. YATES: Your Honor, this is Jessica Yates for  
24 Fredin Brothers. May I be heard briefly on our two pending  
25 unopposed motions?

1 THE COURT: Yes, ma'am. Go ahead.

2 MS. YATES: Yes, Your Honor. We have an unopposed  
3 motion for discharge, and really this is to get back, Your  
4 Honor, to our comment on our last hearing that this -- we are  
5 a typical interpleading plaintiff, a disinterested  
6 interpleading plaintiff --

7 THE COURT: Right.

8 MS. YATES: -- and we'd like to just go ahead and  
9 get out of this case; and we did consult with all of the  
10 parties. They were fine with that, and so that is something  
11 I'm not sure if the Court is expecting (unclear) responses,  
12 but they all represented to us that, you know, this was -- it  
13 would be unopposed.

14 THE COURT: Apparently that's in my -- my box for  
15 review and signature; and I'll see that that gets signed by  
16 tomorrow.

17 MS. YATES: Thank you very much, Your Honor, and  
18 that's also -- it relates as well to a pending counterclaim  
19 that we've just sought to have dismissed as moot. The  
20 (unclear first part of word) -ponents of the counterclaim also  
21 represented they were unopposed, which again, we are simply  
22 just getting out of the case.

23 THE COURT: I'll sign that als--

24 MS. YATES: So hopefully we make clean break.

25 THE COURT: I'll sign that also and bid you *adieu*.

1 MS. YATES: Thank you very much, Your Honor.

2 THE COURT: All right. All right, in the -- that's  
3 all I had in Eastern. In Thomas and Patsy Gibson we had a  
4 First Bank & Trust Company's motion for examination, 2004  
5 exam.

6 MR. DONNELLON: Yes, Your Honor. Dan Donnellon for  
7 First Bank & Trust, and we're here from the last omnibus. I  
8 had indicated that we wanted to continue this over to today  
9 because I'm waiting to hear what the Trustee in the Gibson  
10 case has been able to obtain from Community Bank to see if  
11 there is anything else we need. I tried to catch up with Ms.  
12 Caruso this past week, and unfortunately my schedule didn't  
13 allow it. We traded voice mails, but I'm simply waiting to  
14 see where -- what Mr. Oyler has been producing to the Trustee  
15 to see if there's any reason that we need additional  
16 information. I'm hoping that we will not, but I simply don't  
17 have an answer for the Court right now, and would ask that we  
18 continue this over again.

19 THE COURT: All right. I'll show that's continued  
20 to the next omnibus, 11-15.

21 East West Trucking. Trustee Michael Walro's motion  
22 for authority to destroy records, with objections. Well,  
23 there was an objection by Eastern's Trustee, and an agreed  
24 entry resolving the objection.

25 MS. LALLY: Yes, Your Honor. I'm Elizabeth Lally

1 for (unclear) Walro. We have an order approving agreed entry  
2 (unclear) I believe (unclear)

3 THE COURT: I think it was entered, actually.

4 MS. LALLY: We also have the motion to pay a  
5 priority claim.

6 THE COURT: You have a motion to pay priority claim  
7 of David Sells, and I don't believe they're -- that's a small  
8 wage claim?

9 MS. LALLY: Yes, Your Honor. It's \$1,500, and  
10 there have been no objections filed to that second amended  
11 application. We believe there's enough money in the Trustee's  
12 account to pay this, considering the contested funds as well  
13 as (unclear).

14 THE COURT: All right, I'll show that motion is  
15 granted, and I'll sign an order if you've uploaded one, or if  
16 not, please do so.

17 MS. LALLY: I'd be happy to, Your Honor.

18 THE COURT: All right, very good. That's all I  
19 have. Does anybody have anything else they wish to bring  
20 before the Court in any of these matters? Speak now or  
21 forever hold your peace -- or at least until November 15th.

22 MR. BOWLES: Go I-U.

23 THE COURT: Well, that -- yeah, it's too late for  
24 that. All right, we're adjourned.

25 ATTORNEY: Thank you, Your Honor.

1 (End at 4:34:26 p.m.)

2 \* \* \* \* \*

3 I certify that the foregoing is a true and accurate  
4 transcript from the digitally sound recorded record of the  
5 proceedings.

/s/ Gloria C. Irwin

11/5/2011

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